



July 6, 2011

Honorable Stephen Wm. Smith  
United States Magistrate Judge  
U.S. District Court for the Southern District of Texas  
515 Rusk Street, Room 5300  
P.O. Box 61010  
Houston, Texas 77002-2600

Re: *In re Application of the United States of America for Historical  
Cell Site Data*  
Nos. 4:10-mj-981M; 4:10-mj-990M; 4:10-mj-998M

Dear Judge Smith:

On January 14, 2011, the American Civil Liberties Union, the ACLU of Texas, and the Electronic Frontier Foundation (together, "ACLU and EFF"), and Professor Susan Freiwald, filed amicus briefs in the above-referenced matter. We argued that the district court should uphold Judge Smith's conclusion that the Fourth Amendment requires the government to establish probable cause and obtain a warrant to get historical cell site location information.

We write to inform this Court that on June 27, 2011, the Supreme Court granted certiorari to review the D.C. Circuit's decision in *United States v. Maynard*, 615 F.3d 544 (D.C. Cir. 2010), *cert granted sub. nom. United States v. Jones*, No. 10-1259. In *Jones*, the Court will consider the following questions:

Whether the warrantless use of a tracking device on respondent's vehicle to monitor its movements on public streets violated the Fourth Amendment.

Whether the government violated respondent's Fourth Amendment rights by installing the GPS tracking device on his vehicle without a valid warrant and without his consent.

As the ACLU and EFF's brief emphasizes, and as Judge Smith noted, *Maynard* was not necessary to Judge Smith's conclusion that a warrant was required;

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*Maynard* merely provided additional support for that conclusion. This Court should reach the same conclusion and uphold Judge Smith's order regardless of whether it relies on *Maynard / Jones*.

Given that the decision in *Maynard / Jones* is not necessary to resolve this matter, the importance of the issues this matter presents, and that it could be almost twelve months until the Supreme Court resolves the *Jones* case, this Court should not await a decision in *Jones* before rendering a decision on the pending Objections.

Sincerely,

/s/ Benjamin T. Siracusa Hillman

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